

SUBJECT: Limits of Authority	NUMBER: 1-1.02
EFFECTIVE DATE: June 14, 2016	REVIEW DATE:
NMMLEPSC STANDARDS: ADM.01.01, ADM.02.01, ADM.02.02, ADM.07.01	APPROVED: Sheriff

I. POLICY

Of all the actions a deputy might take during the course of duty, the ones with the most severe consequences concern constitutional rights. The use of deadly force might result not only in injury or death but a review of the constitutionality of the act. Similarly, the arrest of a person for a misdemeanor shoplifting, by contrast, invokes the law of arrest and search and seizure issues that are controlled by the Constitution. The U.S. Constitution and the Bill of Rights guarantee every individual certain safeguards from government intrusion into their lives. These safeguards have become the cornerstone for the application of criminal justice in America. Consequently, these safeguards have placed limitations on the authority of police to enforce the laws of the United States, State of New Mexico, and the County of Valencia. The department expects deputies to observe constitutional safeguards scrupulously and knowledgeably. The department further expects that deputies understand the limits and prerogatives of their authority to act. Respect for the civil liberties of individuals shall be the paramount concern in all enforcement matters.

II. LAW ENFORCEMENT AUTHORITY

1. *New Mexico State Statute 4-41-2* authorizes the County Sheriff to be the conservator of the peace within his county; shall suppress assaults and batteries, and apprehend and commit to jail, all felons and traitors, and cause all offenders to keep the peace and to appear at the next term of the court and answer such charges as may be preferred against them.
2. *New Mexico State Statute 4-41-9* authorizes deputies to discharge all the duties which belong to the office of Sheriff, which may be placed under their charge by their principals, with the same effect as though they were executed by the respective sheriffs.
3. *The Constitution of New Mexico article XX sec.1* requires that all deputies, before performing their duties, take an oath whereby they swear to support the Constitution of the United States and the Constitution and the laws of New Mexico.

III. OATH OF OFFICE

All personnel, prior to assuming sworn status, must take and subsequently abide by an oath of office to enforce the law and to uphold the Constitution of the United States and the State of New Mexico.

- A. The Oath of Office differentiates the deputy sheriff from the civilian. It imposes levels of accountability and responsibility on the deputy that are not made of the general public.
- B. The oath consists of:

OATH OF OFFICE

State of New Mexico
County of Valencia

I, _____ having been appointed or retained on the _____ day of _____, 20__ to the office of Deputy Sheriff in the County of Valencia, State of New Mexico, do solemnly swear that I will support the Constitution of the United States, the Constitution and the laws of the State of New Mexico and faithfully and impartially discharge the duties of said office to the best of my ability, so help me God.

Louis Burkhard, Valencia County Sheriff

Deputy Sheriff

Subscribed and sworn to before me on this _____ day of _____ A.D. _____

My Commission Expires: _____

Notary

IV. LIMITS ON LAW ENFORCEMENT AUTHORITY

Limitations on law enforcement authority are derived from statutes, federal, state, and local judicial interpretation of laws, opinions of the attorney general and, departmental policies/rules and regulations, and county administrative decisions.

- A. Statutory limitations include, but are not limited to
1. Enforcement of laws outside of the county limits. *NMSA 31-2-8* grants authority to enforce state criminal laws beyond the boundaries of the county during fresh pursuit.
 2. *NMSA 29-8-3* allows sheriff's deputies to be sent to other New Mexico jurisdictions by use of a mutual aid agreement to assist another locality in meeting an emergency involving any immediate threat to life or public safety, as outlined in the statute. Further, *NMSA 29-8-3* allows localities to enter into reciprocal agreements with localities to provide mutual aid. Notwithstanding the provisions of this statute, New Mexico Law allows the Sheriff, in a declared emergency, to call upon other chief law-enforcement officers of towns or counties to provide law-enforcement assistance without a need to deputize officers from other jurisdictions.

B. Limitations on law enforcement authority by the district attorney

1. Occasionally, the district attorney may issue opinions to the department imposing limitations on deputies. These areas include, but are not limited to:
 - a) Prosecution of certain cases,
 - b) Extradition,
 - c) Enforcement of certain statutes pending opinions from the Attorney General's Office.
2. Changes in laws/interpretational limitations

Periodically, changes take place which may impose new limitations on police authority or remove or alter existing limitations. Normally, annual updates on such changes are provided to all personnel by the District attorney. In case immediate changes in departmental operations are required, the district attorney's office may provide information orally and confirm it in writing.

C. Constitutional Requirements: General

Compliance with constitutional requirements during criminal investigations:

1. All deputies when conducting criminal investigations shall take all precautions necessary to ensure that all persons involved are afforded their constitutional protections. Deputies shall ensure that:
 - a) All statements or confessions during interviews and interrogations are voluntary and non-coercive.
 - b) All persons are advised of their rights in accordance with this general order.
 - c) All persons accused or suspected of a criminal violation for which they are being interrogated are afforded an opportunity to consult with an attorney.
 - d) They observe constitutional guidelines when conducting search and seizures.
 - e) Prejudicial pre-trial publicity of the accused is avoided so as not to interfere with a defendant's right to a fair and impartial trial.

D. Limitations on intelligence activity:

1. Departmental intelligence gathering activities shall be limited to that information concerning criminal conduct that presents a threat to the community.
2. Departmental personnel and equipment shall only be used in conjunction with intelligence gathering activities, as defined above, in full compliance with all law, and only with the advance approval of the Sheriff.
3. Intelligence information will be collected, used and processed in full compliance with all laws.

V. ON DUTY

The questions of the authority and responsibility of deputy sheriff is one that must be considered in light of the following factors: whether the deputy is on duty or off duty and whether the incident takes place within the jurisdiction of the deputy's department. The statutory provisions and the recent judicial determination have established an amorphous outline, of which deputies should be aware. In addition, deputies are expected to exercise a certain degree of discretion in their enforcement activities. Such discretion appears to run contrary to law, yet is necessary due to the limited resources available to the department.

A. On duty authority

1. While on duty, within the County of Valencia, deputies have the full authority granted peace officers by New Mexico Statute. (refer to NMSA 4-41-9)
2. While on duty, outside the County of Valencia, a deputy's authority is limited to actions directly related to his official duties as a deputy sheriff with Valencia County.

B. On duty responsibility

1. Deputies, while on duty within the County of Valencia, after consideration of the situation at hand, are expected to take all necessary steps consistent with their assignment.
 - a. To protect life and property.
 - b. To enforce the laws of the United States and the State of New Mexico, and the ordinances of the County of Valencia.
 - c. To adhere to 4-41-9 NMSA 1978.
2. On duty deputies outside the County of Valencia should avoid overzealous involvement in police situations.
 - a. If an incident arises in which the deputy reasonably believes his or another person's safety is jeopardized, he should make every effort practicable to cause appropriate action to be effected by the responsible law enforcement agency.
 - b. Action, beyond notifying the appropriate agency, should be taken only after careful consideration of the tactical situation, and of possible liability for themselves and for the County of Valencia.

VI. OFF DUTY

A. Off duty authority

1. While off duty, within the County of Valencia, deputies have the same authority granted on duty peace officers under New Mexico Statute.

2. Due to recent court rulings, and ambiguity within the New Mexico Statutes, off duty deputies, outside the County of Valencia, are advised to consider their authority to make arrests to be that of a citizen.

B. Off duty responsibility

- A. While off duty deputies observing a situation indicating a need for police action, both inside and outside the County of Valencia, should give first consideration to causing the appropriate action to be effected.
 1. By on duty personnel (within the County of Valencia).
 2. By the responsible law enforcement agency (outside the County of Valencia).
- B. Police action by off duty personnel is discouraged, and should be taken only after careful consideration of the tactical situation, the safety of themselves and the public, and possible civil liability.

VII. DISCRETION

- A. Officers are expected to use discretion and authority only in compliance with law, in furtherance of departmental goals and objectives, and in compliance with the department Code of Ethics.
- B. When confronted with situations involving traffic and ordinance violations deputies should examine all possible alternatives to arrest and confinement. This is not meant to discourage the writing of traffic citations or ordinance citations.